

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JOHN R. BUND II, personally, as Executor
of the Estate of Richard C. Bund, deceased,
and on behalf of others similarly situated,

Plaintiffs,

vs.

SAFEGUARD PROPERTIES, LLC, a
Delaware corporation

Defendant.

NO. 2:16-cv-00920-MJP

STIPULATED MOTION TO FILE
FOURTH AMENDED COMPLAINT

NOTE ON MOTION CALENDAR:
March 21, 2018

I. STIPULATION

Pursuant to Federal Rule of Civil Procedure 15(a)(2) and LCR 15, Defendant consents to Plaintiff amending his Third Amended Complaint, Dkt. # 82, in substantially the form of the attached redlined document. By providing consent, Defendant does not agree that Plaintiff's proposed additional claims have merit or that Plaintiff's proposed additional class representatives and additional claims satisfy the requirement of Federal Rule of Civil Procedure 23.

Although Defendant does not adopt Plaintiffs' position on Local Rule and Federal Rule of Civil Procedure 16, set forth in Part II, below, Defendant does not oppose Plaintiffs' request for modification of the deadline to amend pleadings.

1 II. PLAINTIFFS' STATEMENT ON RELIEF FROM DEADLINE

2 Defendant does not join in Part II.

3 On February 16, 2018, this Court issued its Order Setting Trial Date and Related Dates.
4 Dkt. # 220. The order does not provide a deadline for amending pleadings or joining parties.
5 *Id.* Although issued long before the recent factual and legal developments in this case, and
6 although it has been largely superseded by Dkt. # 220, this Court's September 6, 2017
7 scheduling order appears to remain partially in effect, and provides the operative deadline. Dkt.
8 # 142 (setting October 16, 2017 as the deadline to join additional parties and file amended
9 pleadings). Plaintiff seeks to amend his complaint after the October 2017 deadline. Dkt. # 142.
10 Federal Rule of Civil Procedure 16(b)(4) provides that a scheduling order may be modified only
11 with the Judge's consent and for "good cause."

12 The parties therefore jointly request the Court find good cause to modify Dkt. # 142 and
13 grant Plaintiff leave to amend his Third Amended Complaint in order to (1) remove the
14 conversion claim in light of this Court's Order on Motion to Certify (Dkt. # 204) and consistent
15 with the stipulated motion to dismiss John Bund's conversion claim (Dkt. ## 212, 218); (2)
16 remove allegations relating to Mandy and Garrett Hanousek, consistent with this Court's order
17 granting Safeguard's Motion for Summary Judgment Dismissal (Dkt. # 203); (3) remove
18 allegations relating to Crystal Haynes, in light of this Court's Order on Motion to Certify (Dkt.
19 # 204) and consistent with the stipulated motion to dismiss Crystal Haynes claims without
20 prejudice (Dkt. ## 211, 217); (4) revise and include allegations pertaining to two additional
21 negligence claims in light of discovery recently conducted by the parties; and (5) join two new
22 representative plaintiffs only recently identified by Plaintiff's counsel.

23 There is good cause to modify this Court's scheduling order (Dkt. # 142). At the outset,
24 the parties note that trial in this matter was recently reset for more than fourteen months after
25 this stipulation is filed. Dkt. # 220. Discovery remains ongoing and the deadline to complete
26 discovery is January 11, 2019. *Id.* The deadline to file final dispositive motions is soon after:
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1 January 22, 2019. *Id.* In short, the parties have more than ten months—ample time to address
2 this amendment via discovery and/or dispositive briefing. Safeguard will suffer no undue
3 prejudice from this amendment.

4 Class members, on the other hand, may suffer prejudice if this amendment is denied.
5 The Court has ordered the parties to file briefing addressing John Bund’s standing in light of
6 his status as an absent class member of the class certified in *Jordan v. Nationstar Mortgage*,
7 No. 2:14-CV-0175-TOR. *See* Dkt. # 221. The new representative plaintiffs identified in
8 Plaintiff’s proposed Fourth Amended Complaint are not members of the *Jordan* class or any
9 similar certified class. Good cause exists to join these new representative plaintiffs to avoid any
10 possible prejudice to certified class members’ claims if Mr. Bund—the current sole
11 representative of the class—is dismissed as a class representative.

12 And finally, the Rule 16(b)(4) “‘good cause standard’ primarily considers the diligence
13 of the party seeking amendment.” *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th
14 Cir. 1992). Plaintiff has demonstrated more than adequate diligence. And his proposed
15 amendment addresses recent factual and legal developments in this case by (1) removing
16 allegations and parties that this Court dismissed and/or declined to certify in recent rulings, and
17 (2) adding claims and parties recently discovered as a result of formal discovery.

18 In its recent Order on Certification, this Court declined to certify Plaintiff’s conversion
19 sub-class. Plaintiff believes that this Court’s Order also suggests that Safeguard’s vendors are
20 agents rather than independent contractors. Plaintiff therefore believes that, when combined
21 with this Court’s order, Safeguard’s representation that it never orders its vendors to remove
22 personal property from homes prior to the completion of foreclosure, as well as information
23 and documents Safeguard produced in formal discovery on February 27, 2018, March 13, 2018,
24 and in its 30(b)(6) deposition on March 8, 2018, support additional claims for negligent trespass
25 and negligent supervision. Plaintiff very recently learned of Scott and Noel James, who have
26 only recently agreed to serve as class representatives in this case, and representatives of the
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1 proposed negligence claims. *Cf Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995)
2 (suggesting it would be abuse of discretion to deny motion to amend based on new facts).

3 What is more, Plaintiff's counsel has only quite recently had the opportunity to review
4 the veracity of Scott's and Noel's potential claims against Safeguard. Pursuant to the Court's
5 order, Dkt. # 216, p. 2, Plaintiff requested Scott's and Noel's property file on March 2, 2018,
6 and Safeguard produced it on March 13, 2018—long after the October 16, 2017 operative
7 deadline to amend. Stated otherwise, the scheduling order deadline could not “reasonably [have
8 been] met despite the diligence of the party seeking the extension.” *Zikovic v. Southern*
9 *California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). Further, Plaintiff's counsel
10 reviewed the produced records the next day, verified Scott's and Noel's claims, then drafted
11 and provided this stipulation and proposed amendment for Safeguard's review on March 15,
12 2018.

13 Plaintiff has made every effort to diligently seek this amendment. And there is no
14 evidence of undue delay, bad faith, dilatory motive, or prejudice to Safeguard. There is thus
15 good cause to amend Dkt. # 142 and grant Plaintiff leave to amend.

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17 Respectfully submitted this 21st day of March, 2018.

18 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

19
20 s/ CLAY M. GATENS

Clay M. Gatens, WSBA No. 34102

Devon A. Gray, WSBA No. 51485

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

2600 Chester Kimm Road

P.O. Box 1688

Wenatchee, WA 98807-1688

Telephone: 509-662-3685

Fax: 509-662-2452

Email: clayg@jdsalaw.com

Email: devong@jdsalaw.com

1 Respectfully submitted this 21st day of March, 2018.

2
3 Michael D. Daudt, WSBA #25690
4 DAUDT LAW PLLC
5 2200 Sixth Avenue, Suite 1250
6 Seattle, Washington 98121
7 Telephone: (206) 445-7733
8 Facsimile: (206) 445-7399
9 Email: mike@daudtlaw.com

10 Respectfully submitted this 21st day of March, 2018.

11 Beth E. Terrell, WSBA #26759
12 Blythe H. Chandler, WSBA #43387
13 TERRELL, MARSHALL LAW GROUP PLLC
14 Attorneys for Plaintiffs
15 936 North 34th Street, Suite 300
16 Seattle, Washington 98103
17 Telephone: (206) 816-6603
18 Facsimile: (206) 319-5450
19 Email: bterrell@terrellmarshall.com
20 Email: bchandler@terrellmarshall.com

21 Attorneys for Plaintiff

22 Respectfully submitted this 21st day of March, 2018.

23 LEE SMART, P.S., INC.

24 s/PAMELA J. DEVET

25 Pamela J. DeVet, WSBA No. 32882
26 Kellan W. Byrne, WSBA No. 49825
27 701 Pike Street, Suite 1800
Seattle, WA 98101
Telephone: 206-624-7990
Email: pjd@leesmart.com
Email: kwb@leesmart.com

Attorneys for Defendant Safeguard Properties
Management, LLC

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Dated this 23rd day of March, 2018.

Marsha J. Pechman
United States District Judge

1 **CERTIFICATE OF SERVICE**

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3 I hereby certify that on March 21, 2018, I electronically filed the foregoing with the
4 Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the parties
5 listed below by operation of the Court's electronic filing system. Parties may access this filing
6 through the Court's system.

7 PAMELA J. DEVET pjd@leesmart.com
8 KELLAN W. BYRNE kwb@leesmart.com

9 DATED at Wenatchee, Washington this 21st of March, 2018.

10
11 By: s/CLAY M. GATENS
12 Clay M. Gatens, WSBA No. 34102
13 JEFFERS, DANIELSON, SONN & AYLWARD, P.S.
14 2600 Chester Kimm Road
15 P.O. Box 1688
16 Wenatchee, WA 98807-1688
17 Telephone: 509-662-3685
18 Fax: 509-662-2452
19 Email: ClayG@jdsalaw.com
20 Attorneys for Plaintiffs
21
22
23
24
25
26
27